



## POLICE DEPARTMENT

September 2, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Francisco Agis  
Tax Registry No. 933594  
40 Precinct  
Disciplinary Case No. 2012-6907  
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The above-named member of the Department appeared before me on April 22, 2014, charged with the following:

1. Said Police Officer Francisco Agis, while assigned to the 40th Precinct, on or about and between September 17, 2010 and October 13, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on two (2) occasions did request the assistance of other members of the service to prevent the processing and adjudication of several summonses issued to two individuals.

### P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT GENERAL REGULATIONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by Marvyn M. Kornberg, Esq. Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a ten-year member of the Department, is currently assigned to the 40 Precinct. He is currently working in the precinct's Street Narcotics Enforcement Unit. During the course of his career, he has made over 300 arrests, over 100 of which have been for felonies. He has never before been the subject of Department charges and has always received a rating of a 4.0 or 4.5 on his evaluations.

Respondent admitted that it was improper for him to call his delegate about taking care of tickets. On one occasion, he called the delegate about two seatbelt tickets that had been issued to his cousin. Respondent indicated that this case ultimately was dismissed because the tickets never should have been issued to his cousin. On another occasion, Respondent called the delegate for assistance with a ticket that had been issued to a person affiliated with the Bergen County Sheriff's Office.

Respondent named four members of his command who were implicated in the Bronx ticket-fixing investigation and received Command Disciplines (CD) for attempting to influence the disposition of two or more traffic tickets. None of these members, he claimed, forfeited suspension days or were placed on dismissal probation. Respondent did not believe their cases ever went to the Department Advocate's Office.

During cross-examination, when asked how he knew about members receiving CDs for fixing two or more tickets, Respondent testified, "Well, originally when I go in for my [official Department interview], even the lawyer that I had said that that's what they were giving the guys. So then when I got my charges – I know guys that went down for the investigation and I asked them how many summonses they had and . . . they just

said the summonses and it's a CD and that's it." He knew that those members were never suspended from duty because he would have noticed if they were not at work.

Respondent conceded that he did not know what evidence the Internal Affairs Bureau had against those members. He never saw their CD paperwork. Respondent knows that he is not the only police officer in his command to receive charges as a result of the ticket-fixing investigation.

During redirect examination, Respondent clarified that the members who received CDs told him that their cases involved two or three summonses.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty to engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by, on two occasions, requesting the assistance of other MOS to prevent the processing and adjudication of several summonses issued to two individuals. Specifically, Respondent admitted that on one occasion, he contacted a delegate about two seatbelt tickets that had been issued to his cousin, and on another occasion, Respondent called the delegate about a ticket that had been issued to a person affiliated with the Bergen County Sheriff's Office and asked for assistance with the ticket.

The Advocate recommended that Respondent be suspended for five days and forfeit 25 vacation days, for a total forfeiture of 30 days, and that he serve one year on dismissal probation. She stated that this was the established standard penalty that has been imposed by the Police Commissioner where a MOS has assisted or requested the assistance of another MOS to prevent the processing and adjudication of two summonses.

Respondent's attorney argued that Respondent should be punished under the old guidelines for fixing two tickets, which he said was a command discipline. Respondent's attorney stated that when the Advocate's Office started bringing charges against members of the Department who were involved in the ticket-fixing scandal, Respondent was then denied the same lower penalty. In contrast to a command discipline, the penalty now recommended by the Advocate's office was excessive and unfair.

At trial, Respondent named four members of his command who were implicated in the ticket-fixing investigation. He maintained these officers received CDs for attempting to influence the disposition of two or more summonses. Not one of the four members, Respondent claimed, forfeited suspension days or was placed on dismissal probation.

Based on Respondent's assertion that these four members received CDs, Respondent's attorney indicated that Respondent had an equal protection claim. However, Respondent provided no testimony or statements from the named officers. Nor did he submit any documentation of the pleas and penalties he alleged that these officers received. Thus, there was insufficient evidence and no legal basis to support any equal protection claim.

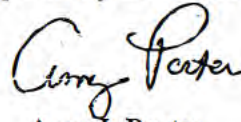
In determining a penalty recommendation, the Court has considered the penalties approved by the Police Commissioner in recent cases where officers have engaged in similar misconduct. In *Case No. 2011-5714* (July 18, 2014), a nine-year police officer who had no prior formal disciplinary record forfeited five suspension days and 25 vacation days and was placed on one-year dismissal probation for requesting the assistance of another officer to prevent the processing and adjudication of two summonses issued to two separate individuals. In *Case No. 2012-6848* (March 26, 2014), an eleven-year police officer with no prior formal disciplinary record was punished with the above standard penalty for requesting help from other officers on two separate occasions in quashing summonses issued to two individuals. See also *Case No. 2011-5618* (Jan. 15, 2014) and *Case No. 2011-5642* (Feb. 18, 2014).

Respondent has not presented sufficient justification to warrant a departure from the established standard penalty. On two separate occasions on behalf of two different individuals, Respondent asked a delegate to quash summonses issued by the Department.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing.

It is further recommended that Respondent be suspended for five days and that he forfeit 25 vacation days for a total forfeiture of 30 days.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner - Trials

**APPROVED**

NOV 06 2014  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER FRANCISCO AGIS  
TAX REGISTRY NO. 933594  
DISCIPLINARY CASE NO. 2012-6907

Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his last three annual performance evaluations. He has been awarded one medal for Excellent Police Duty, two medals for Meritorious Police Duty and one Commendation. [REDACTED]

[REDACTED]. He has no prior formal disciplinary record.

For your consideration.



Amy J. Porter  
Assistant Deputy Commissioner - Trials